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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/643,854

08/19/2003

Francis W. Sullivan

827B

6311

7590

12/27/2004

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EXAMINER

MARCANTONI, PAUL D

ART UNIT

PAPER NUMBER

1755

DATE MAILED: 12/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

AS

Office Action Summary

Application No.

10/643,854

Applicant(s)

SULLIVAN, FRANCIS W.

Examiner

Paul Marcantoni

Art Unit

1755

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) 31-34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Applicant's election of Group I, claims 1-30 in the reply filed on 10/5/04 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-30 are rejected under 35 U.S.C. 102(a and b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Ramme et al. '336 B1, Dingsoyr '060, Garrett '802 B1, and Sato et al. (JP 06157115-abstract only).

All of the above cited references teach a cementitious composition comprising the same components as claimed by applicants in overlapping amounts thus anticipating the instant invention. Even if not anticipated, overlapping ranges of amounts would have been prima facie obvious to one of ordinary skill in the art.

Also, the use of a dry blend versus adding water to a cement mixture would have been an obvious design choice for one of ordinary skill in the art. It would have been obvious to package dry mix prior to adding water because it is understood that water will activate the cement setting.

It is also old in the art to add conventional additives such as superplasticizers because it is commonly used in cement.

Claims 1-30 are rejected under 35 U.S.C. 112, second paragraph, as failing to set forth the subject matter which applicant(s) regard as their invention.

The terms "predetermined" are indefinite in claim 1, 2, and any other claim this term is used.

Claim 1-30 are indefinite because the independent claims are vague. The applicants claim a component selected from fly ash or silica fume yet the claim itself teaches specific amounts of each component as if it is a required component of the claim.

The terms "packaged dry blended cementitious matrix composition" are indefinite and also rejected under 35 USC 101. It is unclear if applicants are claiming a "package" which is an article or they are claiming a composition. Presently, it seems there are two statutory classes of invention in the independent claims such as claim 1, 2, 7, and 24.

The term "*decorative aggregate*" is vague. The applicants define it on page 9 of their specification to state the aggregate has an attractive or architectural surface versus conventional aggregate which allegedly merely adds strength. Yet, how does one distinguish which aggregate is necessarily decorative or not? It is possible that one

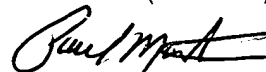
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man's trash is another man's treasure and the same can be said for a particular aggregate. The applicants may consider deleting the term "decorative" but adding it as a dependent limitation such as—an aggregate which is used for a decorative purpose.

Also the terms "Type V hydraulic cement" should be "Type V Portland cement" because this is how it is labeled in the applicants' specification.

Finally, Kelly (US Patent No. 6,692,566 B2) has been cited of interest.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Marcantoni whose telephone number is 571-272-1373. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Paul Marcantoni
Primary Examiner
Art Unit 1755